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STADIS/////////////////////////////////
EXDIS - DISTRIBUTE AS NODIS; FOR U.S. DEL ATHERTON

E.O. 11652: XGDS-2

TAGS: PORG, IS, UNSC

SUBJECT: RESOLUTION 242: WITHDRAWAL ON ALL THREE FRONTS

HERE ARE THE RESULTS OF OUR RESEARCH ON THE HISTORY AND
MEANING OF 242. OBVIOUSLY THE ARGUMENT DOES NOT HAVE ANY
FORMAL OR OFFICIAL STANDING AS A DEFINITIVE U.S. GOVERNMENT
LEGAL POSITION, AND WILL HAVE TO STAND ON THE WEIGHT OF ITS
OWN SUPPORTING EVIDENCE. YOU MAY FIND IT USEFUL TO DRAW ON.
BEGIN TEXT:

I. IN THE PERIOD FROM THE ;967 WAR TO THE ADOPTION OF
RESOLUTION 242, U.S.-ISRAELI COOPERATION WAS GROUNDED ON A
MUTUAL UNDERSTANDING THAT ISRAEL WAS TO WITHDRAW ON ALL
THREE FRONTS IN THE CONTEXT OF AN AGREED PEACE. THE U.S.
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ACTED TO ISRAEL'S BENEFIT IN RELIANCE ON THAT UNDERSTANDING.

A. IN 1967, ISRAEL, IN OBTAINING U.S. LINKAGE OF ISRAELI
WITHDRAWAL TO THE ESTABLISHMENT OF PEACE GAVE THE U.S. AS-
SURANCES THAT IT WAS NOT SEEKING TERRITORIAL EXPANSION.

-- THE GOVERNMENT OF ISRAEL HAD GIVEN ASSURANCES ON
JUNE 5 IN PRIME MINISTER ESHKOL'S LETTER TO PRESIDE;T
JOHNSON: "WE SEEK NOTHING BUT PEACEFUL LIFE WITHIN OUR TER-
RITORY, AND THE EXERCISE OF OUR LEGITIMATE MARITIME RIGHTS."

IT DID NOT ALTER OR MODIFY THESE ASSURANCES WHEN HOSTILITIES TERMINATED . (ISRAEL CLAIMED NO TERRITORY BEYOND THE ARMISTICE LINES AT THE TIME, THUS, THE REFERENCE TO "OUR TERRITORY" MEANT THE TERRITORY WITHIN THOSE LINES.)

-- ON JUNE 8, FOREIGN MINISTER EBAN TOLD AMBASSADOR GOLDBERG THAT ISRAEL WAS NOT SEEKING TERRITORIAL AGGRANDIZEMENT AND HAD NO "COLONIAL ASPIRATIONS".

-- IN PRESIDENT JOHNSON'S JUNE 19 MIDEAST SPEECH, HE DEFINED THE BASIC U.S. APPROACH OF WITHDRAWAL IN THE CONTEXT OF PEACE, AND THE U.S. ADHERED TO IT THEREAFTER DESPITE ARAB OPPOSITION. JOHNSON SAID: "...NO NATION WOULD BE TRUE TO THE UNITED NATIONS CHARTER, OR TO ITS OWN TRUE INTERESTS, IF IT SHOULD PERMIT MILITARY SUCCESS TO BLIND IT TO THE FACT THAT ITS NEIGHBORS HAVE RIGHTS AND ITS NEIGHBORS HAVE INTERESTS OF THEIR OWN." LATER, IN THE SPEECH, HE SAID: "CERTAINLY TROOPS MUST BE WITHDRAWN, BUT THERE MUST ALSO BE RECOGNIZED RIGHTS OF NATIONAL LIFE, PROGRESS IN SOLVING THE REFUGEE PROBLEM, FREEDOM OF INNOCENT PASSAGE, LIMITATION OF THE ARMS RACE, AND RESPECT FOR POLITICAL INDEPENDENCE AND TERRITORIAL INTEGRITY."

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B. THE UNITED STATES WORKED WITH ISRAEL AND THE U.K. DURING FIVE MONTHS OF INTENSIVE DIPLOMATIC EFFORT TO OBTAIN A SECURITY COUNCIL RESOLUTION IN TERMS ACCEPTABLE TO ISRAEL. DURING THAT TIME, ISRAEL WAS FULLY AWARE OF THE U.S. AND U.K. VIEW THAT WITHDRAWAL WAS REQUIRED ON THE WEST BANK AS WELL AS THE EGYPTIAN AND SYRIAN FRONTS, ALTHOUGH NOT NECESSARILY TOTAL WITHDRAWAL; ISRAEL ALLOWED NEGOTIATIONS TO PROCEED ON THIS BASIS WITHOUT RAISING OBJECTION, AND TOOK POSITIONS INCONSISTENT WITH THE IDEA THAT THE WEST BANK OR ANY FRONT WAS TO BE EXCLUDED FROM THE SCOPE OF THE RESOLUTION'S WITHDRAWAL PROVISION.

-- ON SEPTEMBER 19, THE ISRAELI TERRITORIAL IDEAS OUTLINED BY FOREIGN MINISTER EBAN TO AMBASSADOR GOLDBERG INCLUDED: THE INTERNATIONAL BORDER WITH EGYPT, SOME TERRITORIAL ADJUSTMENT WITH SYRIA, MUSLIM CONTROL AND SOVEREIGNTY OVER THE HOLY MUSLIM QUARTER, AND TWO ELEMENTS FOR THE WEST BANK - DEMILITARIZATION WITH U.N. INSPECTION, AND SOME FORM OF ECONOMIC, CUSTOMS OR TRAVEL ARRANGEMENTS PERMITTING ISRAEL ACCESS TO AND LARGER COOPERATION WITH THE AREA. (EARLIER, ON JUNE 22, WHEN EBAN INFORMED RUSK OF THE TENTATIVE ISRAELI MINISTERIAL CONCLUSIONS, ISRAEL HAD SOUGHT PEACE WITH SYRIA BASED ON THE INTERNATIONAL FRONTIER AND ON DEMILITARIZATION OF THE GOLAN HEIGHTS.)

-- ON OCTOBER 11, EBAN EXPRESSED SATISFACTION TO GOLDBERG OVER A U.S.-U.K. AGREED MINUTE WHICH INDICATED

THAT THE TEXT OF THE RESOLUTION UNDER NEGOTIATION "REFER-
RING TO WITHDRAWAL MUST SIMILARLY BE UNDERSTOOD TO MEAN
WITHDRAWAL FROM OCCUPIED TERRITORIES OF THE UAR, JORDAN
AND SYRIA." ("TERRITORIES OF...JORDAN" WAS CLEARLY
UNDERSTOOD TO REFER TO THE WEST BANK. NO OTHER TERRITORY
COULD HAVE BEEN MEANT; ISRAELI FORCES DID NOT OCCUPY THE
EAST BANK. U.S.-ISRAELI CONVERSATIONS AT THE TIME REFERRED
TO THE WEST BANK AS THE TERRITORY OF JORDAN, AND THIS WAS
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THE GENERAL USAGE IN THE SECURITY COUNCIL AT THE TIME.
SEE, FOR EXAMPLE, RESOLUTION 228 OF 1966 DEALING WITH AN
ISRAELI ATTACK ON THE WEST BANK.)

-- IN A CONVERSATION ON OCTOBER 25 WITH UNDER SECRETARY
KATZENBACH AND OTHERS, EBAN STATED THAT ISRAEL HAD TRIED
TO GET WORD TO THE ARABS THAT ISRAEL WAS NOT THINKING OF
MAJOR TERRITORIAL CHANGES. HE DID NOT DEMUR WHEN, IN A
DISCUSSION OF THE WEST BANK, ROSTOW REFERRED TO THE UNITED
STATES COMMITMENT TO THE TERRITORIAL INTEGRITY OF JORDAN.
(TERRITORIAL INTEGRITY OF EVERY STATE IN THE AREA, AN ELE-
MENT OF RESOLUTION 242, FIGURED IN ALL U.S.-PROPOSED RES-
OLUTIONS ON THE SUBJECT.) SUMMING UP THE ISRAELI POSI-
TION IN THIS CONVERSATION WHICH EXPRESSLY EMBRACED THE
WEST BANK, EBAN STATED THAT, ON THE TERRITORIAL SIDE,
WHAT ISRAEL SOUGHT WERE "SMALL SECURITY ADJUSTMENTS".

-- ISRAEL WAS AWARE THAT, TO GET A RESOLUTION ISRAEL
COULD LIVE WITH, THE U.S. HAD TO GIVE THE ARABS ASSURANCES
ON THE WITHDRAWAL ASPECT. THERE IS NO INDICATION IN OUR
RECORDS THAT ISRAEL OBJECTED TO THE U.S. GIVING SUCH ASSUR-
ANCES. AMBASSADOR HARMAN, ON NOVEMBER 6, WAS BRIEFED BY
ROSTOW ON GOLDBERG'S ASSURANCE TO HUSSEIN ON NOVEMBER 3
THAT THE U.S. ENVISAGED ISRAELI WITHDRAWAL ON THE WEST BANK
AND THE PROTECTION OF JORDANIAN TERRITORIAL INTEGRITY,
ALTHOUGH SOME TERRITORIAL ADJUSTMENT WOULD BE REQUIRED.
BATTLE BRIEFED HARMAN ON NOVEMBER 8 ON RUSK'S NOVEMBER 6
RENEWAL TO HUSSEIN OF THE NOVEMBER 3 ASSURANCES. ON
NOVEMBER 11, GOLDBERG REPORTED TO EBAN THAT HUSSEIN HAD
USED THE U.S. ASSURANCES TO SEEK TO BRING THE ARAB GROUP
ALONG WITH THE U.S. RESOLUTION (WHICH WAS ULTIMATELY TRANS-
FORMED INTO RESOLUTION 242, THE U.K. TEXT).

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II. RESOLUTION 242, AS ADOPTED, CALLS FOR WITHDRAWAL
WITHOUT GEOGRAPHICAL LIMITATION, IN TERMS THAT CAN ONLY
REASONABLY BE INTERPRETED AS EMBRACING ALL THREE FRONTS.
THIS IS THE MEANING OF THE TEXT, CONFIRMED BY THE NEGOTIAT-
ING HISTORY AND CONTEXT, AND BY THE STATEMENTS IN EXPLANA-

TION OF VOTE GIVEN BY THE SECURITY COUNCIL MEMBERS. IT

IS ALSO CONFIRMED BY LATER ISRAELI INTERPRETATIONS.

A. THE NEGOTIATING HISTORY - WE HAVE RESEARCHED THE RECORDS OF THE PUBLIC AND PRIVATE NEGOTIATIONS LEADING UP TO ADOPTION OF RESOLUTION 242, AND THE EXPLANATIONS OF VOTE AT ITS ADOPTION, AND WE CONCLUDE THAT THERE IS NO ROOM FOR DOUBT THAT THE MEMBERS OF THE COUNCIL, AND ISRAEL, WHILE DIFFERING ON THE QUESTION OF WHETHER OR NOT WITHDRAWAL WOULD HAVE TO BE TOTAL, AND WHETHER OR NOT IT HAD TO PRECEDE IMPLEMENTATION OF THE OTHER ELEMENTS OF PEACE, SHARED A COMMON CORE OF UNDERSTANDING THAT THE PRINCIPLE OF WITHDRAWAL WAS APPLICABLE TO ALL THREE FRONTS.

-- MOST OF THOSE MEMBERS GIVING SUBSTANTIVE INTERPRETATIONS SAID IT MEANT A COMMITMENT TO TOTAL WITHDRAWAL WITH IMPLEMENTATION OR NEGOTIATION TO PROCEED ON THAT BASIS.

-- THE MOST PERMISSIVE VIEW WAS THAT OF THE UNITED STATES THAT SOME LEEWAY WAS LEFT FOR NEGOTIATED CHANGES OF BORDERS AND THAT WITHDRAWAL NEED NOT OCCUR UNTIL THERE WERE SECURE AND RECOGNIZED BOUNDARIES TO WITHDRAW TO.

-- INDIA, IN REMARKS ON NOVEMBER 22, CONCURRED IN BY MALI, NIGERIA, THE U.S.S.R., AND BULGARIA, INTERPRETED RESOLUTION 242 AS COMMITTING THE COUNCIL TO TOTAL WITHDRAWAL OF ISRAELI ARMED FORCES FROM ALL THE OCCUPIED TERRITORIES, WHILE NOT RULING OUT "MUTUAL TERRITORIAL ADJUSTMENTS".

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-- ARGENTINA REGRETTED THAT THE TEXT WAS NOT CLEARER THAT WITHDRAWAL FROM ALL OF THE OCCUPIED TERRITORIES WAS REQUIRED BUT SAID: "WE TRUST THAT THE IMPLEMENTATION WILL ACHIEVE THESE ENDS."

-- BRAZIL STRESSED THE ACCEPTANCE BY ALL PARTICIPANTS AT THE SECURITY COUNCIL TABLE OF THE PRINCIPLE OF NON-ACQUISITION OF TERRITORY BY FORCE, ADDING THAT ITS ACCEPTANCE "DOES NOT IMPLY THAT BORDERLINES CANNOT BE RECTIFIED AS A RESULT OF AN AGREEMENT FREELY CONCLUDED AMONG THE INTERESTED STATES."

-- FRANCE, CITING THE FRENCH TEXT AS EQUALLY AUTHENTIC, SAID WITHDRAWAL "DES TERRITOIRES OCCUPES" LEFT NO ROOM FOR ANY AMBIGUITY.

-- THE U.K. EXPLANATION OF VOTE REFERRED TO CARADON'S NOVEMBER 20 SPEECH IN WHICH HE HAD SAID THAT: "THIS RESOLUTION...DRAWS ON THE IDEAS AND FORMULATIONS OF OTHERS

AND SEEKS TO BRING THEM ALL TOGETHER IN A BALANCED WHOLE" (I.E., ITS MEANING IS ROOTED IN A COMPROMISE OF ALL THOSE IDEAS. THIS MEANS IT DOES NOT EMBODY POSITIONS ALIEN TO ALL MEMBERS AT THE TIME). HE REAFFIRMED HIS FOREIGN SECRETARY'S STATEMENT THAT: "BRITAIN DOES NOT ACCEPT THAT A STATE SHOULD BE ALLOWED TO EXTEND ITS FRONTIERS AS A RESULT OF WAR. THIS MEANS ISRAEL MUST WITHDRAW. BUT EQUALLY, ISRAEL'S NEIGHBORS MUST RECOGNIZE ITS RIGHT TO EXIST, AND IT MUST ENJOY SECURITY WITHIN ITS FRONTIERS." HE ALSO SAID, "IN OUR RESOLUTION WE STATED THE PRINCIPLE OF THE 'WITHDRAWAL OF ISRAEL ARMED FORCES FROM TERRITORIES OCCUPIED IN THE RECENT CONFLICT' AND IN THE PREAMBLE WE EMPHASIZED 'THE INADMISSIBILITY OF THE ACQUISITION OF TERRITORY BY WAR'. IN OUR VIEW, THE WORDING OF THOSE PRO-SECRET

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VISIONS IS CLEAR." HE ALSO STATED THAT THE ARAB AIM OF ISRAELI WITHDRAWAL AND THE ISRAELI AIM OF SECURE AND RECOGNIZED BOUNDARIES WERE NOT IN CONFLICT.

-- AMBASSADOR GOLDBERG, EXPLAINING HIS VOTE, SAID HE VOTED IN THE CONTEXT OF JOHNSON'S JUNE 19 SPEECH AND HIS OWN PREVIOUS SECURITY COUNCIL STATEMENTS. HE ALSO SAID, "I HAVE VOTED FOR MY OWN SPEECH AND ASSUME OTHERS HAVE DONE LIKEWISE FOR THEIRS." HIS NOVEMBER 15 STATEMENT, REFERRING TO THE U.S. DRAFT, EMPHASIZED THAT IT MEANT "ISRAEL MUST WITHDRAW; THE ARAB STATES MUST RENOUNCE THE STATE OF BELLIGERENCE AND CLAIM OF BELLIGERENCE...AND MUST RECOGNIZE EACH OTHER'S RIGHTS WHICH ARE SET FORTH EXPLICITLY IN ARTICLE 2 OF THE CHARTER." HE ALSO STRESSED THE INTERDEPENDENCE OF THE PRINCIPLES AND SAID: "TO SEEK WITHDRAWAL WITHOUT SECURE AND RECOGNIZED BOUNDARIES, FOR EXAMPLE, WOULD BE JUST AS FRUITLESS AS TO SEEK SECURE AND RECOGNIZED BOUNDARIES WITHOUT WITHDRAWAL."

B. THE RESOLUTION'S TEXT - THE TEXT ITSELF, TAKEN AS A WHOLE, AS IT MUST (THIS IS NOT ONLY A NORMAL RULE OF TEXTUAL INTERPRETATION, BUT WAS EMPHASIZED BY A NUMBER OF SECURITY COUNCIL MEMBERS IN DISCUSSING THIS RESOLUTION), CAN ONLY REASONABLY BE READ AS CALLING FOR WITHDRAWAL ON ALL THREE FRONTS.

-- THE PURPOSE OF THE RESOLUTION WAS TO PROMOTE A JUST AND LASTING PEACE FOR "EVERY STATE IN THE AREA", AFFORDING THEM ALL SECURITY AND RESPECTING THE "TERRITORIAL INTEGRITY" OF EVERY STATE IN THE AREA. THE PRINCIPLE OF "WITHDRAWAL" WAS SET OUT AS ONE WHICH WAS TO BE APPLIED IN ESTABLISHING THAT PEACE.

-- THE SECRETARY-GENERAL'S SPECIAL REPRESENTATIVE IS, BY THE RESOLUTION'S TERMS, TO ESTABLISH CONTACTS "WITH THE STATES CONCERNED IN ORDER TO PROMOTE AGREEMENT AND

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AND ASSISTFFORTS TO ACHIEVE A PEACEFUL AND ACCEPTED SETTLEMENT IN ACCORDANCE WITH THE PROVISIONS AND PRINCIPLES IN THIS RESOLUTION." THUS, THE PRINCIPLES, WHICH INCLUDE WITHDRAWAL, AND THE PROVISIONS, WHICH INCLUDE THE PREAMBULAR ONES, WERE SPECIFICALLY INTENDED FOR APPLICATION IN THE CONTACTS WITH ALL THE STATES CONCERNED, AND NOT JUST BETWEEN ISRAEL AND SELECTED STATES OF ISRAEL'S CHOICE.

-- THE PREAMBULAR STATEMENT "EMPHASIZING...THE INADMISSIBILITY OF THE ACQUISITION OF TERRITORY BY WAR" IS NOT QUALIFIED. IT IS NOT STATED IN TERMS OF "UNLAWFUL WAR"; HAD IT BEEN MEANT TO APPLY ONLY TO UNLAWFUL WAR, IT WOULD HAVE BEEN UNACCEPTABLE IN THE RESOLUTION FOR THOSE STATES WHICH WERE UNWILLING TO CONDEMN ISRAEL'S 1967 ACTIONS. WHATEVER ARGUMENTS CAN BE MADE ABOUT THE ACCURACY OF THE UNQUALIFIED STATEMENT AS A GENERALLY ACCEPTED NORM OF INTERNATIONAL LAW, RATHER THAN A POLITICAL STATEMENT, THE WORDS ARE UNQUALIFIED. FURTHER, THE STATEMENTS MADE BY THE U.K., 242'S SPONSOR, AND A VARIETY OF OTHER SECURITY COUNCIL MEMBERS MADE ABSOLUTELY CLEAR THAT THE PREAMBULAR PASSAGE ON THE INADMISSIBILITY OF TERRITORIAL ACQUISITION WAS AN ESSENTIAL INTERPRETIVE ELEMENT IN A CAREFULLY DRAWN AND BALANCED RESOLUTION. (SEE SECURITY COUNCIL STATEMENTS ABOVE.)

-- THE PROVISION ON INADMISSIBILITY OF TERRITORIAL ACQUISITION BY WAR IS NOT QUALIFIED GEOGRAPHICALLY. IT, ACCORDINGLY, CANNOT BE READ AS BEING INTENDED FOR APPLICATION ONLY ON SELECTED FRONTS.

C. ISRAEL ITSELF DID NOT CLAIM THEN,PUBLICLY OR IN CONFIDENTIAL DIPLOMATIC EXCHANGES, THAT THE PRINCIPLE OF SECRET

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WITHDRAWAL APPLIED ONLY ON SELECTED FRONTS AND, (AS THE INFORMATION SET OUT UNDER POINT I.B. ABOVE SHOWS), ON THE CONTRARY, UNDERSTOOD THAT WITHDRAWALS WERE CALLED FOR ON ALL THREE FRONTS, THE WEST BANK INCLUDED. THIS UNDERSTANDING IS EVIDENT FROM SUBSEQUENT ISRAELI ACTIONS.

-- AMBASSADOR TEKOAH, IN HIS MAY 1, 1968 SECURITY COUNCIL STATEMENT, SAID: "I AM ALSO AUTHORIZED TO REAFFIRM THAT WE ARE WILLING TO SEEK AGREEMENT WITH EACH ARAB STATE ON ALL MATTERS INCLUDED IN THAT RESOLUTION."

-- IN JULY, 1968, DURING CONSULTATIONS WITH THE U.S. ON THE JARRING MISSION UNDER RESOLUTION 242, EBAN TOLD BALL THAT HE COULD CONVEY TO KING HUSSEIN THE IMPRESSION

THAT INA "REAL PEACE SETTLEMENT", THE KING WOULD GET BACK VERY MUCH, BUT NOT ALL, OF WHAT HE LOST. EBAN TOLD THE

AMERICANS THAT THEY COULD TELL HUSSEIN, ON ISRAEL'S BEHALF, THAT WHILE ISRAEL DID NOT ENVISAGE RESTORATION OF THE JUNE 4 LINES, IT DID ENVISAGE A LIMITED KINGDOM ON BOTH SIDES OF THE JORDAN RIVER, WHICH WOULD INCLUDE THE ARAB POPULATION AND MOST OF THE TERRITORY. ISRAEL, EBAN STATED, SOUGHT ONLY TERRITORIAL CHANGES JUSTIFIED ON SECURITY GROUNDS.

-- IN ITS FORMAL ACCEPTANCE ON AUGUST 3, 1970, OF THE U.S. INITIATIVE, ISRAEL EXPRESSED ITS "READINESS...TO CARRY OUT THE SECURITY COUNCIL RESOLUTION IN ALL ITS PARTS." SINCE, IN ITS ACCEPTANCE LETTER, ISRAEL RELATED THIS TO DISCUSSIONS "WITH THE UAR (JORDAN)", SEPARATELY, ISRAEL CLEARLY UNDERSTOOD THAT ALL PARTS OF RESOLUTION 242 APPLIED IN THE CONTEXT OF THE WEST BANK, NOT JUST THE EGYPTIAN FRONT.

-- THE GAHAL PARTY WAS CLEAR IN ITS UNDERSTANDING THAT RESOLUTION 242, AND THE U.S. INITIATIVE OF 1970 WHICH IN-
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CORPORATED IT, CALLED FOR WITHDRAWALS ON ALL THREE FRONTS. BEGIN TOOK GAHAL OUT OF THE GOVERNMENT BECAUSE IT FORMAL ACCEPTANCE OF THE U.S. INITIATIVE VIOLATED THE PARTY'S COMMITMENT TO THE PRINCIPLE OF NON-WITHDRAWAL FROM THE WEST BANK.

-- CRITICIZING THE DECISION TO ACCEPT, BEGIN STATED ON AUGUST 1 THAT "THERE WILL BE A CLEAR UNDERTAKING FOR THE STATE OF ISRAEL TO AGREE TO REPARTITION OF THE STATE OF ISRAEL...WE NEVER IMAGINED THAT AFTER JUDEA AND SAMARIA CAME UNDER JEWISH RULE, WE WOULD ANNOUNCE THAT WE HAVE NO RIGHT TO THEM AND UNDERTAKE TO HAND THEM OVER TO HUSSEIN."

-- ON AUGUST 3, ISRAELI RADIO REPORTED THAT BEGIN SAID THAT "IN AN AFFIRMATIVE REPLY TO THE U.S. PEACE INITIATIVE THE ISRAELI GOVERNMENT COMMITS ITSELF TO ACCEPTING THE SECURITY COUNCIL RESOLUTION WHICH THE FOUR POWERS, INCLUDING THE UNITED STATES, INTERPRET AS COMPLETE WITHDRAWAL EXCEPT FOR MINOR BORDER ADJUSTMENTS."

-- ON AUGUST 4, BEGIN IN A KNESSET DEBATE, STRESSED THAT "IN ALL ITS CLARIFICATIONS, THE UNITED STATES HAS STATED THAT ITS INTENTION IS FOR MINOR BOUNDARY ADJUSTMENTS ALONG THE 1967 LINES. ACCEPTANCE OF THIS STAND WILL COMPEL US TO WITHDRAW EVEN BEYOND THE MINIMUM DEMANDS OF OTHER FACTIONS IN THE GOVERNMENT...THE IMPORTANT REMARKS OF THE U.S. PRESIDENT DO NOT REDUCE THE SERIOUSNESS OF THE

COMMITMENT TO WITHDRAW...."

-- AS RECENTLY AS FEBRUARY 26, 1976, THE ISRAELI CABINET AUTHORIZED PROPOSING TO THE ARABS NEGOTIATION OF INTERIM AGREEMENTS ON ALL THREE FRONTS: IN RETURN FOR A TERMINA-
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TION OF THE STATE OF WAR BY EGYPT, SYRIA, AND JORDAN, ISRAEL WOULD CARRY OUT WITHDRAWALS IN SINAI, THE GOLAN HEIGHTS AND THE WEST BANK.

III. ISRAEL HAS ACCEPTED RESOLUTION 242 WITH ITS GIVEN MEANING. THE ISRAELI GOVERNMENT IS NOT FREE UNILATERALLY TO REDEFINE A SECURITY COUNCIL RESOLUTION.

A. ISRAEL TOOK NO EXCEPTION TO 242'S WITHDRAWAL PROVISIONS.

-- ISRAEL, FULLY COGNIZANT OF THE FACT THAT ALL THE PROVISIONS OF RESOLUTION 242, INCLUDING WITHDRAWAL, APPLIED REGARDING THE WEST BANK AS WELL AS THE EGYPTIAN AND SYRIAN FRONTS, INVOLVED ITSELF APPROVINGLY IN THE U.S. AND U.K. EFFORTS TO GAIN ITS ADOPTION, AND MADE NO RESERVATION OR QUALIFICATION REGARDING THE APPLICABILITY OF ITS PROVISIONS TO ALL FRONTS WHEN IT LATER FORMALLY ACCEPTED RESOLUTION 242. AS NOTED ABOVE, ITS FORMAL STATEMENTS OF MAY 1, 1968 AND AUGUST 3, 1968, CONTAIN NO SUCH RESERVATION OR QUALIFICATION.
WE HAVE ALSO CHECKED ISRAEL'S WRITTEN ASSURANCES TO JARRING, DATED FEBRUARY 19, 1968, WHICH RESPONDED TO RESOLUTION 242 "AFFIRMATIVELY", ALTHOUGH IN GENERAL TERMS. IT HAS NO QUALIFICATION OR RESERVATION.

-- NOR IS THERE ANY SUCH RESERVATION OR QUALIFICATION IN THE MAY, 1970 KNESSET STATEMENT AUTHORIZED BY THE CABINET OVER GAHAL'S OBJECTION: "ISRAEL DECLARED ON MAY 1, THROUGH HER AMBASSADOR TO THE U.N. THAT THE GOVERNMENT OF ISRAEL ACCEPTS RESOLUTION 242 OF THE SECURITY COUNCIL FOR THE ESTABLISHMENT OF A JUST AND LASTING PEACE."

B. ISRAEL IS NOT FREE UNILATERALLY TO REDEFINE A SECURITY COUNCIL RESOLUTION. SUCH RESOLUTIONS ARE INTERPRETED ACCORDING TO THEIR TERMS AND THE INTENT
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OF THE PARTIES, IN LIGHT OF THEIR CONTEXT AND PURPOSES.

THE PRACTICE OF THE SECURITY COUNCIL INDICATES THAT GREAT WEIGHT IS GIVEN TO DETERMINING, THROUGH STATEMENTS MADE AND POSITIONS TAKEN AT THE TIME, WHAT MEANING THE

STATES ADOPTING THE RESOLUTION INTENDED THE TERMS TO BEAR.

-- THE RECORD DOES NOT SUPPORT AN ASSERTION THAT THE SECURITY COUNCIL MEMBERS INTENDED THE PRINCIPLE OF WITHDRAWAL NOT TO BE APPLICABLE ON ALL FRONTS.

-- THUS, THERE IS NO BASIS FOR AN EXPECTATION THAT SUCH A READING WOULD BE SUSTAINED BY EITHER THE SECURITY COUNCIL OR THE INTERNATIONAL COURT OF JUSTICE--AND THESE ARE THE TWO PRINCIPAL AUTHORITIES COMPETENT TO RULE ON THE MEANING OF A SECURITY COUNCIL RESOLUTION.

IV. ISRAEL IS BOUND TO THE ACCEPTANCE OF RESOLUTION 242 AND ITS COMMITMENT TO WITHDRAWALS ON ALL THREE FRONTS.

A. IT IS BOUND VIS-A-VIS THE UNITED STATES THROUGH OUR RELIANCE ON THAT ACCEPTANCE.

-- THE UNSTINTING DIPLOMATIC SUPPORT GIVEN ISRAEL BY THE UNITED STATES SINCE THE JUNE WAR HAS BEEN BASED, INTER ALIA, ON MUTUAL UNDERSTANDING WITH ISRAEL THAT IT WOULD, IN EXCHANGE FOR PEACE, SUBSTANTIALLY WITHDRAW ON THE WEST BANK AS WELL AS THE OTHER FRONTS. THIS WAS THE PREMISE OF JOHNSON'S SPEECH AND THE DIPLOMATIC EFFORTS MADE BY THE UNITED STATES AND THE UNITED KINGDOM TO BLOCK SECURITY COUNCIL PROPOSALS IN 1967 WHICH WERE UNACCEPTABLE TO ISRAEL AND TO SECURE ACCEPTANCE OF AN ACCEPTABLE ONE, RESOLUTION 242.

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-- THE UNITED STATES' ACTIONS IN RELIANCE ON THAT MUTUAL UNDERSTANDING INCLUDED MAKING IMPORTANT COMMITMENTS BASED ON IT. IT WOULD BE DEEPLY TROUBLING WERE AN ISRAELI GOVERNMENT TO FEEL FREE TO RETREAT FROM THIS UNDERSTANDING. WITH ALL THAT HAS BEEN DONE IN RELIANCE ON ISRAEL'S ACCEPTANCE OF RESOLUTION 242 AND THIS BASIC TERRITORIAL PREMISE, ISRAEL IS ESTOPPED FROM CHANGING ITS POSITION ON THE QUESTION OF RESOLUTION 242 EMBRACING WITHDRAWAL ON ALL THOEE FRONTS.

-- AS THE U.S.-ISRAEL MEMORANDUM OF AGREEMENT OF SEPTEMBER 1, 1975 MAKES CLEAR IN ITS PROVISIONS ON PROCEEDING TO A GENEVA PEACE CONFERENCE BASED ON RESOLUTIONS 242 AND 338, CONTINUED ISRAELI READINESS TO APPLY RESOLUTION 242 IN ALL ITS PARTS WAS A FUNDAMENTAL MUTUAL UNDERSTANDING BASIC TO U.S.-ISRAELI COOPERATION IN THIS AREA AND TO THE ENTIRE SET OF U.S. UNDERTAKINGS

ASSOCIATED WITH SINAI II.

-- THIS IS RECONFIRMED BY THE U.S-ISRAEL JOINT STATEMENT OF OCTOBER 4, 1977: "THE UNITED STATES AND ISRAEL

AGREE THAT SECURITY COUNCIL RESOLUTIONS 242 AND 338 REMAIN THE AGREED BASIS FOR THE RESUMPTION OF THE GENEVA PEACE CONFERENCE..." FURTHER, THE OCTOBER 5, 1977, WORKING PAPER, WHICH CONTEMPLATES SEPARATE WORKING GROUPS FOR THE NEGOTIATION OF PEACE TREATIES WITH JORDAN, EGYPT, SYRIA AND LEBANON, STATES THAT RESOLUTIONS 242 AND 338 ARE "THE AGREED BASIS FOR THE NEGOTIATIONS AT THE GENEVA PEACE CONFERENCE."

B. ISRAEL IS ALSO BOUND VIS-A-VIS THE UNITED NATIONS AND THE OTHER PARTIES CONCERNED.

-- ISRAEL'S UNQUALIFIED ACCEPTANCE OF THE RESOLUTION 242
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BINDS ISRAEL TO SEEK A SETTLEMENT IN ACCORDANCE WITH THE PROVISIONS AND PRINCIPLES OF THAT RESOLUTION. IT CONSTITUTES ISRAEL'S COMMITMENT TO THE UNITED NATIONS AND THE OTHER PARTIES CONCERNED OF ITS WILLINGNESS TO JOIN (AND ITS INSISTENCE THAT OTHERS JOIN) IN ESTABLISHING A JUST AND LASTING PEACE WHICH SHOULD INCLUDE APPLICATION OF THE STATED PRINCIPLES, INCLUDING "WITHDRAWAL OF ISRAEL ARM-D FORCES FROM TERRITORIES OCCUPIED IN THE RECENT CONFLICT..."

-- WITH THOSE ARAB STATES WHICH HAVE ACCEPTED RESOLUTION 242, INCLUDING ITS COMMITMENT TO ESTABLISH AN AGREED SETTLEMENT, THERE HAS BEEN A MUTUAL AND BINDING UNDERTAKING.

-- WITH EGYPT, ISRAEL DIRECTLY BOUND ITSELF BY PARAGRAPH D OF THE SINAI I ACCORD AND ARTICLES I AND VIII OF SINAI II TO IMPLEMENT RESOLUTION 338 WHICH, IN TURN, INCLUDES IMPLEMENTATION OF RESOLUTION 242 "IN ALL ITS PARTS."

C. FINALLY, THE ESTABLISHED PRINCIPLE OF INTERNATIONAL LAW THAT INTERNATIONAL OBLIGATIONS ASSUMED ON BEHALF OF A STATE BY ONE GOVERNMENT ARE BINDING ON SUCCESSOR GOVERNMENTS IS A VITAL ONE FOR ISRAEL. IT WOULD NOT WISH, FOR EXAMPLE, TO ALLOW A FUTURE EGYPTIAN GOVERNMENT TO DENY ANY OBLIGATION TO RESPECT A PEACE AGREEMENT WHICH THE SADAT GOVERNMENT MIGHT ENTER INTO ON EGYPT'S BEHALF, AND IN RELIANCE ON WHICH ISRAEL HAD TAKEN SIGNIFICANT STEPS. VANCE

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Office: ORIGIN NODS
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Subject: RESOLUTION 242: WITHDRAWAL ON ALL THREE FRONTS
TAGS: PORG, PBOR, IS, XF, UNSC
To: JERUSALEM NIACT TEL AVIV NIACT MULTIPLE
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